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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GUSTAVO HERRERA individually and
on behalf of others similarly situated, and
the general public,

Plaintiff,

vs.

SODEXHO, INC., a Delaware corporation,
and Does 1 through 10, inclusive,

Defendants.

No. C-05-1247-JF

**STIPULATION AND ~~PROPOSED~~ ORDER RE:
STAY PENDING JUDICIAL APPROVAL OF
SETTLEMENT**

STIPULATION AND ORDER RE: STAY
U.S.D.C., N.D. Cal., No. C-05-1247-JF

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STIPULATION AND ORDER RE: STAY
U.S.D.C., N.D. Cal., No. C-05-1247-JF

STIPULATION

Plaintiff Gustavo Herrera and defendant Sodexho, Inc., acting through their respective counsel of record, hereby stipulate as follows:

1. This action, *Herrera v. Sodexho, Inc.*, U.S.D.C., N.D. Cal., No. C-05-1247-JF (“*Herrera*”), and a related action, *Cevallos v. Sodexho, Inc.*, U.S.D.C., N.D. Cal., No. C-05-1671-JF (“*Cevallos*”), both are currently pending before this Court. A case management conference in both actions is scheduled for Friday, January 6, 2006.

2. On December 15, 2005, the parties in *Herrera* and *Cevallos* participated in a private mediation before Antonio C. Piazza of Gregorio, Haldeman, Piazza, Rotman & Frank, which produced a settlement of both actions.

3. Because both actions are putative class actions, the settlement is subject to preliminary and final judicial approval before it may become effective.

4. As part of the settlement, and to avoid any issue of whether this Court has jurisdiction over the actions to approve a settlement (due to the question whether plaintiffs’ claims are preempted by the Employee Retirement Income Security Act of 1974), the parties have agreed that a new action will be filed in Alameda Superior Court for the sole purpose of obtaining preliminary and final judicial approval of the settlement. Should that occur, the parties then will stipulate to dismissal of *Herrera* and *Cevallos*. Should the settlement not be approved, then the Alameda Superior Court action will be dismissed and the parties will request the Court to lift the stay in *Herrera* and *Cevallos*.

5. The parties therefore believe there is good cause for, and on that basis request that the Court order, a stay of both *Herrera* and *Cevallos* until such time as either the settlement of both actions is finally judicially approved, or the settlement of both actions is not finally judicially approved, by means of the planned Alameda Superior Court action.

6. The parties anticipate that the settlement will receive final judicial approval in or about June 2006. The parties will timely report to the Court at that time on the status of judicial approval of the settlement before the Alameda Superior Court.

7. Nothing in this stipulation is intended to constitute a waiver by either side of its respective position on whether the Court has jurisdiction over *Herrera* or *Cevallos*.

STIPULATION AND ORDER RE: STAY
U.S.D.C., N.D. Cal., No. C-05-1247-JF

1 Dated: December __, 2005. DANIEL FEINBERG
2 LEWIS, FEINBERG, RENAKER & JACKSON P.C.

3 AARON KAUFMANN
4 DAVID POGEL
5 HINTON, ALFERT & SUMNER

6 JOHN W. BEEBE
7 GREEN & AZEVEDO

8 By: _____
9 Daniel Feinberg
10 Attorneys for Plaintiff Gustavo Herrera

11 Dated: December __, 2005. JEFFREY D. WOHL
12 STEPHEN H. HARRIS
13 PAUL, HASTINGS, JANOFKY & WALKER LLP

14 By: /s/ _____
15 Jeffrey D. Wohl
16 Attorneys for Defendant Sodexo, Inc.

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1 7. Nothing in this stipulation is intended to constitute a waiver by either side of
2 its respective position on whether the Court has jurisdiction over *Herrera* or *Cevallos*.

3 Dated: December 22, 2005. DANIEL FEINBERG
4 LEWIS, FEINBERG, RENAKER & JACKSON P.C.

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6 DAVID FOGEL
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10 By: 

Daniel Feinberg
Attorneys for Plaintiff Gustavo Herrera

11 Dated: December __, 2005. JEFFREY D. WOHL
12 STEPHEN H. HARRIS
13 PAUL, HASTINGS, JANOFKY & WALKER LLP

14 By: _____

Jeffrey D. Wohl
Attorneys for Defendant Sodexho, Inc.

ORDER

Based on the parties' stipulation, and good cause appearing therefor,

IT IS ORDERED that this action be and is hereby STAYED pending the parties' efforts to obtain final judicial approval of their settlement by means of a new action to be filed with the Alameda Superior Court. The parties are directed to report to the Court on or before June 30, 2006, on the status of the approval process.

IT IS FURTHER ORDERED that the case management conference scheduled for January 6, 2006, be and is hereby VACATED.

Dated: December 28, 2005.

/s/electronic signature authorized

Jeremy Fogel
United States District Judge